

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

May 28, 2003

Agenda ID #2295

TO: PARTIES OF RECORD IN APPLICATION 03-02-013

This is the draft decision of Administrative Law Judge (ALJ) Galvin. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

Decision **DRAFT DECISION OF ALJ GALVIN** (Mailed 5/28/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of San Jose Water Company's
(U 168-W) Application to Modify Certain Terms
of Resolution No. W-4294 (Order Modifying
Balancing Account Protection for Offsettable
Expenses).

Application 03-02-013
(Filed February 11, 2003)

**OPINION ON MODIFICATION
OF RESOLUTION NO. W-4294****I. Summary**

We find that San Jose Water Company (SJWC) is within its rate case cycle for 2003 and remains eligible to file advice letter requests to record and recover offsettable expenses recorded in memorandum accounts established pursuant to Ordering Paragraph 2 of Resolution No. W-4294 (Resolution) dated November 29, 2001.

II. Background

SJWC postponed tendering a January 2003 notice of intent (NOI) to file a general rate case (GRC) application for rates to become effective on January 1, 2004. SJWC made that postponement at the request of the Office of Ratepayer Advocates (ORA) to accommodate ORA's workload and staffing requirements. The NOI was subsequently filed on April 8, 2003 as NOI #0403.

III. Request

SJWC seeks safeguards to ensure that it not be financially harmed from the delay in filing its NOI. Specifically, SJWC seeks a modification of the Resolution

to clarify that SJWC is within its rate case cycle and eligible to file offsettable expense advice letter requests. SJWC also seeks a Commission ruling affirming that any rate change resulting from its 2003 GRC application becomes effective on January 1, 2004 pursuant to the terms of Section 455.2, regardless of when a final decision is issued.¹

IV. Response

ORA had no objection to SJWC's request for affirmation that SJWC is within its rate case cycle for the purpose of filing offsettable expense advice letter requests, as set forth in ORA's March 7, 2003 response. However, ORA declined to take a position on whether Section 455.2 should be applicable to SJWC's 2003 NOI on the basis that the Commission is in the process of developing a new rate case plan (RCP).

V. Resolution W-4294

The Resolution addressed water and sewer utilities' requests for offset rate relief and balancing account treatment for offsettable expenses, purchased power, purchased water, and pump tax. Ordering Paragraph 2 of that resolution requires all water utilities with existing balancing accounts to suspend those balancing accounts and start a new and separate balancing-type memorandum account for each offsettable expense of purchased water, purchased power or pump tax. However, Ordering Paragraph 10 precludes Water Division from accepting and processing Class A utility or district offset advice letter requests if the utility has elected to forgo a timely GRC.

¹ All statutory references are to the Public Utilities Code unless otherwise stated.

SJWC is concerned that its voluntary delay in tendering its NOI may be interpreted as an election to forgo a timely GRC. That interpretation may effectively harm SJWC financially because it would put SJWC outside of its three-year rate case cycle and preclude SJWC from obtaining offset rate relief through advice letter requests.

The rejection of offset advice letter requests for Class A utilities outside of the rate case cycle was based on a Water Division recommendation. Water Division recommended that Class A utilities should lose all rights to recover offsettable expenses “if the utility fails to file for a GRC within the one-year time period, unless that period is extended for up to six months by the Executive Director upon a showing of the Office of Ratepayer Advocates that it cannot process the rate case within the statutory 18-month time period.”²

Although the Resolution did not adopt Water Division’s recommendation in its entirety, there is latitude in determining what constitutes a “timely GRC,” absent an adopted definition. In this instance, SJWC deferred initiating its GRC process by two months, well within its rate case cycle established by Decision (D.) 90-08-045, to accommodate ORA’s workload. That reason was confirmed by ORA in its response to the application and is consistent with the intent of our adoption of Water Division’s recommendation.

There is no need to modify the Resolution. SJWC is within its rate case cycle for 2003 and remains eligible to file advice letter requests for offsettable expenses pursuant to the Resolution.

² Resolution No. W-4292, at p.18.

VI. Section 455.2

Governor Davis signed Assembly Bill No. 2896 (AB 2896) into law on September 30, 2002.³ AB 2896 required the Commission to establish a schedule for every water utility subject to the RCP to file an application pursuant to the plan every three years. However, in recognition that the RCP established in D.90-08-045 had not been updated to reflect statutes adopted since its promulgation in 1990, AB 2896 required the Commission to revise that RCP no later than December 31, 2003, to ensure consistency with relevant statutes and Commission practice in addressing water utilities rate applications.

AB 2896 further added Section 455.2 to the California Public Utilities Code. (Stats. 2002, Ch. 1147, Sec. 3. Effective January 1, 2003.) Subsection (a) of that section provides for the Commission to issue final Class A water utilities GRC decisions with an effective date of the first day of the first test year in the GRC application. Subsection (b) of that section provides for interim rates (reflecting the rate of inflation) to become effective on the first day of the first test year and subject to refund if a final decision is not issued and made effective the first day of the first test year. However, if the presiding officer in the case determines that the decision cannot become effective on the first day of the first test year due to actions by the water utility, the presiding officer or the Commission may establish a different effective date for interim or final rates.

The intent of AB 2896 was to update the Commission's water utilities' RCP based on current statutes and to improve on that plan so that timely GRC filings are tendered by the water utilities and rates become effective on the first day of

³ See the attached Appendix A for the full text of AB 2896.

the first applicable test year. The Commission's Water Branch is preparing a rulemaking proceeding to implement that process, which is to be completed by December 31, 2003.

SJWC tendered its NOI under the 1990 RCP. That process does not reflect the impact of statutes adopted since the RCP was promulgated and does not provide any assurance that rates will become effective on the first day of the first test year. SJWC seeks to apply the provisions of AB 2896 that provide for rates to become effective on the first day of the first test year.

Although Section 455.2 may be applicable in this instance, there is no evidence demonstrating that it should be implemented prior to updating the RCP and establishing a schedule for Class A water utilities to file a GRC every three years. Moreover, SJWC's request is premature absent the submittal of SJWC and ORA testimony that identifies issues, if any, between the parties and completion of reasonable efforts to resolve the GRC in a timely manner.

SJWC has not demonstrated a need to decide at this time whether its 2004 test year rates should become effective January 1, 2004. The effective date of any rate change that may result from SJWC's 2003 NOI to file a GRC should not be set at this time.

VII. Procedural Matters

Pursuant to Rule 6(a)(1), SJWC requested that this matter be classified as a ratesetting proceeding and that hearings not be held, asserting that all necessary information to issue a decision has been included in its application or been incorporated by reference. By Resolution ALJ 176-3108, dated February 27, 2003, the Commission preliminarily determined that this was a ratesetting proceeding and that no hearings were expected.

Notice of this application appeared in the Commission's Daily Calendar of February 14, 2003. Although a response was filed by ORA, we find no reason to hold a public hearing and no reason to change the preliminary determinations made in Resolution ALJ 176-3108. The preliminary ratesetting categorization is affirmed.

VIII. Comments on Draft Decision

The assigned ALJ's draft decision in this matter was filed with the Docket Office and mailed to all parties of record in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Commission's Rule of Practice and Procedure (Rules).

IX. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Michael J. Galvin is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SJWC postponed filing its January 2003 NOI to file a GRC application at the request of ORA so that ORA could participate in SJWC's GRC proceeding.
2. SJWC tendered its April 8, 2003 NOI under the water utilities RCP established in D.90-08-045.
3. Ordering Paragraph 10 of Resolution W-4294 precludes Water Division from accepting and processing utility or district offset advice letter requests if the Class A utility has elected to forgo a timely GRC.
4. The Commission's Water Branch has begun the process of updating the water utilities RCP.
5. AB 2896 requires the Commission to update its water utilities RCP no later than December 31, 2003.

6. AB 2896 also provides for the Commission to establish a schedule requiring every water utility subject to the RCP to file an application pursuant to the plan every three years.

Conclusions of Law

1. SJWC is within its rate case cycle for 2003, based on the RCP established in D.90-08-045.

2. It is premature to set the effective date of any rate change that may result from SJWC's NOI, absent the filing of the GRC itself and reasonable efforts to resolve the case on a timely basis.

3. No modifications to Resolution W-4294 are required.

4. Today's order should be made effective immediately, so that these issues may be clarified immediately.

O R D E R**IT IS ORDERED** that:

1. San Jose Water Company (SJWC) is within its rate case cycle for 2003 and remains eligible to file advice letter requests pursuant to Ordering Paragraph 2 of Resolution No. W-4294.

2. SJWC's request to modify Resolution W-4294 is denied.

3. Application 03-02-013 is closed.

This order is effective today.

Dated _____, at San Francisco, California.